



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-1057]

RIN 1625-AA09

Drawbridge Operation Regulation; Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Metro-North WALK Bridge across the Norwalk River, mile 0.1, at Norwalk, Connecticut. The bridge owner submitted a request to require a greater advance notice for bridge openings and to increase time periods the bridge remains in the closed position during the weekday morning and evening rush hours. It is expected that this change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2014-1057 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting

comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this supplemental proposed rule, call or e-mail Mr. Chris Bisignano, Project officer, First Coast Guard District, telephone 212-514-4331, e-mail Christopher.j.bisignano@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On August 31, 2015, we published a notice of proposed rulemaking (NPRM) entitled, Drawbridge Operation Regulation; Norwalk River, Norwalk, CT, in the Federal Register (80 FR 52423), soliciting comments on the proposed rule through October 30, 2015. In addition, Commander (dpb), First Coast Guard District published Public Notice 1-149 dated September 21, 2015. We received four submissions on the proposed rule, which will be addressed in Section III, below.

The Metro-North WALK Bridge, mile 0.1, across the Norwalk River at Norwalk, Connecticut, has a vertical clearance in the closed position of 16 feet at mean high water and 23 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR § 117.217(b). The waterway users are seasonal recreational vessels and commercial vessels of various sizes.

The owner of the bridge, Connecticut Department of Transportation (CDOT), requested a change to the Drawbridge Operation Regulations because the volume of train traffic across the bridge during the peak commuting hours makes bridge openings impractical under the current schedule. As a result, bridge openings that occur during peak commuter train hours cause significant delays to commuter rail traffic.

The NPRM published in August 2015 would have permanently changed the operating hours during the Monday – Friday, excluding holidays, timeframes to operate as follows:

- (1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 4:30 a.m. through 9:30 a.m. and from 4 p.m. through 9 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.
- (2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

In response to the comments received and after further review of bridge logs and train schedules, the Coast Guard now proposes to modify the NPRM by adjusting when the draw will be available to open Monday through Friday, excluding holidays as follows:

- (1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 5:45 a.m. through 9:45 a.m. and from 4 p.m. through 8 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.
- (2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

III. Discussion of Comments and Change

We received four submissions commenting on the NPRM. Three submissions opposed and one submission supported the proposed changes. Some submissions commented on multiple aspects of the proposed regulation. The Coast Guard considered all comments and the responses from CDOT in creation of this supplemental alternative proposal.

One comment suggested a meeting to deliberate the changes proposed in this rulemaking. The Coast Guard met with all parties that expressed interest in this rulemaking on May 11, 2015. The Coast Guard does not see a need to hold additional public meetings at this time.

One comment requested that any modification to the existing rule should not be extended past the initiation of construction of a new replacement bridge. The Coast Guard disagrees. A replacement bridge is only in the planning stage at CDOT. Design and construction of a replacement project for a bridge of this scale typically takes several years. As the timeline of a potential bridge replacement is uncertain, the Coast Guard cannot consider it within this rulemaking.

One comment suggested that any change in the operating regulations for the Metro-North WALK bridge should take into consideration the operating rule of the downstream SR136 (Washington Street) Bridge to facilitate the movement of waterborne commerce. The Coast Guard agrees that the operating schedule of the SR136 Bridge is relevant and considered the operating schedule for SR136 when drafting this supplemental rulemaking.

One comment recommended that the Coast Guard consider revising the 4:30 a.m. to 9:30 a.m. opening schedule, Monday through Friday, as only two trains cross the bridge from

9 a.m. to 9:30 a.m. In response to this comment, the Coast Guard expanded its analysis of train traffic densities; this analysis contributed to the adjustments made in this supplemental rule compared to the proposed rule. These adjustments shorten from five to four hours the a.m. and p.m. periods provided for in the “except that” language in paragraph (b)(1) of the regulation, but also shifts the a.m. period to end later in the day.

Two commenters noted that the added restrictions to opening times of the bridge would negatively impact aggregate deliveries and require alternative deliveries by truck, thereby stressing the road system in the area. Even under the more restrictive test deviation conducted from January 1, 2015, to June 28, 2015, as discussed in the NPRM, Metro-North was able to accommodate all of the requests for bridge openings. Further, review of the bridge logs revealed that in 2014, prior to the aforementioned test deviation and NPRM, as compared to 2015 during the test deviation and the NPRM, the difference in the number of requested bridge openings was negligible. The Coast Guard also reviewed tidal data for this area in consideration of the types of commercial traffic known to use this waterway. The combination of these factors contributed to the adjustments made in this supplemental rule compared to the proposed rule.

The Coast Guard believes the supplemental changes balance the needs of rail and vessel traffic. The proposed changes enhance rail traffic without significantly affecting vessel traffic.

In review of the proposed rule and stakeholder comments, the Coast Guard noted that the term “emergency,” as used within the existing and proposed regulation, was not specifically discussed. The term and associated required actions by the bridge owner are as defined within 33 CFR 117.31. This proposed rule makes no changes to regulations under

that section. However, the Coast Guard notes that there may be instances in which emergent conditions beyond those explicitly listed therein could merit a special opening of the bridge for draft constrained vessels when tides and the bridge schedule interfere. For example, if the inventory of seasonally critical home heating oil or road salt at a facility upstream of the bridge that serves as the primary supply within the local area is or will soon be exhausted, and a commercial vessel transit to replenish inventory must occur during an allowed-closed period of the bridge, this condition may also reasonably be expected to require a special opening of the bridge to support public safety. In such cases, the Coast Guard expects that the bridge owner, and involved local municipality or commercial entity can make special arrangements as needed.

IV. Discussion of Proposed Rule

Based on further review of bridge logs and scheduled train crossings, the Coast Guard now proposes to modify the NPRM , specifically changing the “except that” language in paragraph (b)(1) of the regulation as indicated above in Section II. This slight modification would better serve the freedom of navigation without significantly impacted rail traffic.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and discuss First Amendment rights of protestors.

1. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance

of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the proposed rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the fact that vessels can still transit the bridge given advanced notice. The vertical clearance under the bridge in the closed position is relatively high enough to accommodate most vessel traffic during the time periods the draw is closed during the morning and evening commuter rush hours.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

3. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

4. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR

FURTHER INFORMATION CONTACT section above.

5. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

6. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

7. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's

instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.217, revise paragraph (b) to read as follows:

§ 117.217 Norwalk River.

* * * * *

(b) The draw of the Metro-North “WALK” Bridge, mile 0.1, at Norwalk, shall operate as follows:

(1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 5:45 a.m. through 9:45 a.m. and from 4 p.m. through 8 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.

(2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

- (3) A delay in opening the draw not to exceed 10 minutes may occur when a train scheduled to cross the bridge without stopping has entered the drawbridge lock.
- (4) Requests for bridge openings may be made by calling the bridge via marine radio VHF FM Channel 13 or the telephone number posted at the bridge.

Dated: March 24, 2016

L. L. FAGAN

Rear Admiral, U.S. Coast Guard

Commander, First Coast Guard District

[FR Doc. 2016-07662 Filed: 4/1/2016 8:45 am; Publication Date: 4/4/2016]